UNITED STATES OF AMERICA BEFORE THE NATIONAL LABOR RELATIONS BOARD REGION 9

In the matter of:

MASSEY ENERGY COMPANY AND ITS SUBSIDIARY, SPARTAN MINING COMPANY D/B/A MAMMOTH COAL COMPANY

and

Case No. 9-CA-42057

UNITED MINE WORKERS OF AMERICA

MOTION FOR A CONTINUANCE

The Respondent, Massey Energy Company, moves that the due date for filing additional briefing in this case be postponed until April 19, 2011, and in support thereof states:

- 1. On September 30, 2009, the Board issued a Decision and Order (354 NLRB No. 83) finding violations against Mammoth Coal Company, but severed the issue of Massey Energy's liability and reserved it for future consideration.
- 2. On March 15, 2011, the Board issued a Revised Invitation to File Briefs on certain procedural issues relating to consideration of single employer status. The Board set a date of April 5, 2011, for the filing of briefs.
- 3. The undersigned, Counsel for Massey Energy Company, did not receive a copy of the Revised Invitation to File Briefs by U.S. Mail. In fact, it appears that the Board has failed to serve Counsel for Massey Energy with a copy of the Revised Invitation to File Briefs.
- 4. Not having received timely notification of the Board's Invitation to File Briefs, a postponement is necessary in order for Massey Energy Company to properly

research and prepare a brief on the specific issues raised by the Board.

5. Counsel for Massey Energy Company has notified all other parties of this Motion. Charles F. Donnelly, Counsel for the United Mine Workers of America, has indicated that the Union does not object to the continuance. Forrest Roles, Counsel for Mammoth Coal Company, agrees to the continuance. Counsel has not yet been able to secure a commitment as to objection or agreement to the Motion from Counsel for the General Counsel.

Wherefore, Respondent, Massey Energy Company, moves that the due date for the briefs be postponed until April 19, 2011, and that the due date for responsive briefs be moved to May 3, 2011.

Dated this 28th day of March 2011.

Respectfully Submitted,

OGLETREE, DEAKINS, NASH, SMOAK & STEWART, P.C.

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CERTIFICATE OF SERVICE

I, Richard R. Parker, do hereby certify that the foregoing document was served on the parties via facsimile and by mailing a true copy thereof by United States first class mail, postage prepaid, on the 28th day of March 2011, and addressed as follows:

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